

DEPARTMENT OF THE NAVY  
Office of the Secretary  
Washington, D.C. 20350

SECNAVINST 5822.1A  
JAG: 14  
6 July 1984

SECNAV INSTRUCTION 5822.1A

From: Secretary of the Navy  
To: All Ships and Stations

Subj: Federal Magistrates Act; implementation by  
Department of the Navy

Ref: (a) Federal Magistrates Act, Pub. L. No. 90-578,  
82 Stat. 1107 (1968), as amended by Pub. L.  
No. 96-82, 93 Stat. 643 (1979)  
(b) OPNAVINST 11200.5B (NOTAL)  
(c) OPNAVNOTE 11200 of 25 July 1983

Encl: (1) Format, Consent to be Tried by United States  
Magistrate

1. **Purpose.** To revise policies and procedures for imple-  
R) mentation of the Federal Magistrates Act and the handling  
of misdemeanors committed at Navy and Marine Corps  
installations.

A) 2. **Cancellation.** SECNAV Instruction 5822.1.

3. **Background.** The Federal Magistrates Act [reference  
(a)] was enacted by Congress to reform the first echelon  
of the Federal judiciary into a more effective component  
of a modern scheme of justice. Magistrates are appointed  
by the judges of each U.S. district court in such numbers  
and at such locations as may be determined by the Judicial  
R) Conference of the United States. In general, magistrates  
have jurisdiction over misdemeanors committed on Fed-  
eral installations. Department of Defense activities are to  
utilize U.S. magistrates to the maximum extent practicable  
in the disposition of such offenses. The Director of Ad-  
ministrative Office of the U.S. Courts, who is empowered  
to supervise the administration of the magistrates, has ad-  
vised that in the future offenders will be referred to the  
magistrates only by means of DD Form 1805.

4. **Policy**

a. Misdemeanors, such as minor traffic violations com-  
mitted on base, should be disposed of under the admin-

istrative and disciplinary authority of the commander con-  
cerned. Normally, adequate corrective action of such in-  
fractions can be taken under applicable base or civilian  
personnel regulations.

b. Military offenders should normally be dealt with  
under appropriate military regulations and the Uniform  
Code of Military Justice.

c. Charges should not be preferred against civilians for  
trial before U.S. magistrates unless other means, such as  
suspension of base privileges, disciplinary action under  
civilian personnel regulations or, in the case of nongovern-  
ment personnel, exclusion from the base, have been deter-  
mined to be inadequate or inappropriate.

5. **Jurisdiction of Magistrates.** The jurisdiction and pro-  
cedures of Federal magistrates pertinent to this instruction  
are:

a. U.S. magistrates may try only violations of Federal  
law, including assimilated state criminal laws. Magistrate  
citations will be issued only when a violation of base safety,  
traffic, or protective regulations also constitutes a violation  
of Federal law or of state law that is applicable to a mili-  
tary installation pursuant to the provisions of either 18  
U.S.C. Section 13 or 40 U.S.C. Sections 318a-318c. Only a (R)  
state's criminal law may be incorporated into Federal law  
by the Assimilative Crimes Act (18 U.S.C. Section 13), and  
when a state's traffic regulations are not criminal in nature,  
only installations that have exclusive and concurrent juris-  
dictional areas are included within the current delegation  
under 40 U.S.C. Section 318b. See references (b) and (c).

b. U.S. magistrates have jurisdiction to dispose of mis-  
demeanors. A misdemeanor is an offense punishable under  
the laws of the United States, the penalty for which does  
not exceed imprisonment for 1 year or include the death  
penalty (18 U.S.C. Section 1). Included therein are viola-  
tions of state law which have been assimilated pursuant to  
18 U.S.C. Section 13. In addition, in those states where  
traffic offenses cannot be assimilated under 18 U.S.C. Sec-  
tion 13 because such violations are not criminal offenses,  
but where the United States has exclusive or concurrent  
jurisdiction over the military installation or parts thereof, (R)  
those traffic laws may be enforced by Federal magistrates

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as petty offenses under 40 U.S.C. Section 318c. (See reference (c) and the delegations of authority enclosed with that notice.) Installations or parts thereof that are only held by the United States under proprietary authority are outside the scope of 18 U.S.C. Section 13 and are not covered by the delegation under 40 U.S.C. Section 318b in reference (c). Consequently, traffic offenses promulgated as Navy, Marine Corps, or base regulations on such proprietary installations, or parts thereof, are presently unenforceable by a U.S. magistrate.

c. Any U.S. magistrate specially designated for that purpose by an appointing court has jurisdiction to try and sentence persons committing misdemeanors in any place which is within the judicial district for which such magistrate was appointed (18 U.S.C. Section 3401(a)).

d. Any person charged with a misdemeanor may elect, however, to be tried before a judge of the district court where the offense was committed. The magistrate shall carefully explain to the defendant that he or she has a right to trial before a judge of the district court (or before judge and jury of such court) and shall not proceed to try the case unless the defendant, after such explanations, signs a written consent to trial by the magistrate which waives trial, judgment, and sentencing by a judge of the district court (18 U.S.C. Section 3401(b)). See enclosure (1).

e. In cases of conviction by the magistrate, an appeal may be taken to the judge of the district court of the district where the offense was committed (18 U.S.C. Section 3402).

## **6. Objective and Operation of Magistrate System**

a. The U.S. magistrate system provides a procedure whereby military departments can use the U.S. district courts and magistrates to process and dispose of misdemeanors expeditiously by mail. Under this system and with guidance from the U.S. district court, magistrates will pre-set fines for most misdemeanors by local court rules and will permit persons who are charged with such violations, and who neither contest the charge nor wish to have a court hearing, simply to pay their fines by using mail-in, preaddressed, franked envelopes furnished to them with the violation notice.

b. The district court will prescribe by local court rules those misdemeanors which are excluded from the mail-in fine procedure and which, therefore, require a mandatory court appearance by the defendant. In addition, defendants may voluntarily request a court appearance either at the time the ticket is written, or by mail when responding to the ticket.

c. For military installations, the heart of the U.S. magistrate system is DD Form 1805, a multipurpose, four-ply ticket that is stocked through the Navy supply system. (R)

d. The trial of misdemeanors may proceed on an indictment, information, complaint, or if the misdemeanor is a petty offense, on a citation or violation notice. A petty offense is defined as "any misdemeanor, the penalty for which does not exceed imprisonment for a period of 6 months or a fine of not more than \$500 or both." 18 U.S.C. §1(3). (A) A misdemeanor case above the petty offense level may be initiated by a citation or a violation notice, and either of those documents will suffice if a plea of guilty or nolo contendere is entered before the magistrate. If such a case is to go to trial, however, then a complaint, information, or indictment will be required.

## **7. Action**

a. Judge advocate/law enforcement personnel will effect appropriate liaison with local magistrates to determine those misdemeanors which require a court appearance, scale of fines, details for completing, filing and accounting for tickets, and otherwise implementing reference (a). (R)

b. Military and base police will be thoroughly briefed in the operation of the Federal Magistrates Act system with particular emphasis on the policies and procedures of the local district court and magistrate.

c. DD Form 1805 will be procured and used throughout the Navy shore establishment when referral of an offense to a magistrate is deemed appropriate or is directed by Department of the Navy policy.

d. In the event that a magistrate has not been appointed for the area and need for such service is determined, base commanders will contact the local U.S. Attorney and request that action be initiated to have a magistrate appointed.

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**R)** e. Except for misdemeanors that may be paid by mail-in fine, completed DD Form 1805s will be reviewed prior to referral to ensure that the stated offense is properly triable by a U.S. magistrate. When possible, a Navy or Marine Corps judge advocate should conduct that review.

b. Consent to Trial, OPNAV Form 5822/1, has been cancelled and removed from the supply system. A format for a consent to trial document is attached to this instruction as enclosure (1) **(R)**

**8. Forms**

**R)** a. Violation Notice, DD Form 1805, is available from Cognizant Symbol "I" stock points under SN 0102-LF-001-8052.

**JAMES F. GOODRICH**  
Under Secretary of the Navy

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## UNITED STATES DISTRICT COURT

FOR THE

(insert location of court)

Magistrate's Docket No. \_\_\_\_\_

Case No. \_\_\_\_\_

UNITED STATES OF  
AMERICA

v.

CONSENT TO BE TRIED BY  
UNITED STATES MAGISTRATE

\_\_\_\_\_  
I, \_\_\_\_\_ charged with \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(insert brief description of offense) \_\_\_\_\_,  
a misdemeanor against the laws of the United States on a Federal  
reservation, in the \_\_\_\_\_ Division of the \_\_\_\_\_  
District of \_\_\_\_\_ appearing before \_\_\_\_\_,  
United States Magistrate, who has fully apprised me of my right to elect  
to be tried before a judge of the United States District Court which has  
jurisdiction of the offense, and explained to me the consequences of  
this consent, do hereby waive my right to trial, judgment and sentencing  
by a judge of the United States District Court, and do hereby consent to  
be prosecuted before the magistrate on the charge hereinabove stated, as  
authorized by title 18, United States Code, section 3401.

Dated: \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(DEFENDANT)\_\_\_\_\_  
(WITNESS)